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August 28, 2002

CAD Bulletin No. 2002-04 -A

TO: Telecommunications Carriers; Service List for 2001-852
FROM: Derek Davidson, Director, Consumer Assistance Division
SUBJECT: August 14 Meeting to Discuss Chapter 290, 291 and 292

This memo summarizes a meeting held at the Commission on August 14, 2002, regarding the implementation of the new consumer protection rules for telecommunications carriers, Chapters 290, 291 and 292, and sets forth staff's policy for enforcing the new rules. The purpose of the meeting was to provide carriers the opportunity to ask Commission staff questions regarding the new rules, as well as to discuss any implementation challenges the carriers expect to encounter. The memo first addresses the general, procedural issues raised at the meeting, then answers the specific questions in a "question and answer" format. We expect to schedule a second meeting sometime close to the revised implementation date for Chapter 290 (January 23, 2003). Notice of this meeting will be provided.

The first procedural issue discussed at the meeting was the waiver request submitted by the Telephone Association of Maine (TAM) regarding Chapter 290 (ETC). TAM requested that the Commission grant a six-month waiver of Chapter 290 to provide ETCs time to transition to the new requirements of Chapter 290. On August 12, 2002, the Commission granted TAM's request; thus, ETCs have until January 23, 2003 to fully comply with Chapter 290. Until that date, ETCs must comply with Chapters 81 and 86 – they may not implement Chapter 290 on a piecemeal basis.

Questions were also raised at the meeting regarding the impact of the Commission's August 12th Order on the CAD Bulletin issued July 19 (and July 23), which stated that all carriers have until November 1, 2002, to transition to the new rules. First, with regard to ETCs and Chapter 290, the August 12 Order controls and compliance must occur on January 23, 2002. Second, with regard to CLECs and IXC's and Chapters 291 and 292, the CAD Bulletin controls and thus CLECs and IXC's have until November 1, 2002 to bring their systems into compliance. This is contrary to what Staff stated at the August 14 meeting. Upon further review of the CAD Bulletin, we



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recognized that the bulletin addressed all three chapters, even though it focused on ETC/290 issues. Thus, we clarify that the CAD Bulletin is not a formal waiver of the rules that went into effect on June 30, 2002, but is a statement of Staff's enforcement policy regarding Chapters 291 and 292. We will not cite a carrier for violations or initiate any other action for non-compliance with the new rules in Chapters 291 and 292 until November 1, 2002, so long as the carrier is in compliance with current Chapters 81 and 86. After November 1, non-ETCs and IXC's must comply with the requirements of Chapters 291 and 292 respectively or must request a waiver pursuant to section 15. IXC's must, however, immediately comply with section 9 of Chapter 292, "Notification of Price Increases..." as this is a statutory requirement already in place.

Whichever rule non-ETCs and IXC's choose to follow prior to November 1, Chapters 81 and 86, or 291 or 292 respectively, the rule must be followed in its entirety. Carriers should not attempt to comply with or implement the new rules piece meal. This will create confusion for customers, the carrier, and Commission staff.

Specific questions regarding the application or interpretation of Chapter

290:

1. Does Chapter 290 allow ETCs to place complete toll blocks (i.e. block all calls to any long distance network) on the lines of customers who fail to pay toll charges?

Answer: No. ETCs can block a customer's access to its toll network for non-payment, but cannot block that customer's access to other toll carriers' networks. ETCs also cannot block the customer's access to dial around services, 800 numbers, directory assistance, or operator services.

2. What recurring charges are considered "basic service," i.e. FCC access charges, state and federal taxes?

Answer: Any charge or fee that would be levied if the customer ordered only basic service can be considered basic service charges. Also, carriers must separately list charges, taxes and fees for each service provided. See answer to question # 6 below.

3. Operator services charges, directory assistance charges, and unpublished telephone number charges – are these basic service?

Answer: Yes.

4. How are past due amounts (that could have accrued within the past six years) addressed when transferring these amounts to a customer's current account? Can an ETC consider toll charges incurred before the effective date of the new rule as "basic service?"

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Answer: Once Chapter 290 is in effect, lump sums of past due amounts must be apportioned pursuant to the amount charged for each service IF the carrier wishes to use any of the **overdue** amounts as the basis for the disconnection of basic service. ETCs may apportion the entire past due amount to non-basic if they wish.

- 5. Can ETCs issue bills that are "payable upon receipt" if the ETC indicates that the customer has 25 days from the post-mark on the bill to pay?**

Answer: No. Pursuant to Chapter 290, section 12(E)(9), bills must contain a "due date." By definition, "due date" is the "date by which payment must be received and after which the account is considered overdue."

- 6. Do ETCs have to separately itemize taxes and late payment fees for each service offered, i.e. basic, toll, optional - AND - must a bill separately state the payment applied to each type of service billed or can it list the total amount paid as a lump sum for all services?**

Answer: Pursuant to Chapter 290, section 12(E)(12) and section 17(B&C), as well as Chapter 292, section 10(A), carriers must separately list charges, taxes, and fees associated with each service offered, i.e., basic, toll and optional services. Likewise, carriers must also separately list payments attributed to each service offered. Carriers can, however, include a bundled "total amount due" and "total amount paid," provided that the separate service itemizations previously described are also included.

- 7. How do ETCs address payment arrangements for "package" services? What about multiple services offered by the same company (not through a bundled service offering)?**

Answer: *Package Service Offerings.* ETCs may provide a single payment arrangement for "package deal" services that represents several services bundled together for a one single price. If the customer does not honor the payment arrangement on the bundled service and the ETC wishes to pursue disconnection, the ETC must isolate the basic service charges from all other charges and attribute all payments made since the inception of the payment arrangement to basic services. The ETC cannot disconnect the customer's basic service, but may default the customer to the ETC's minimum basic service offering and terminate the other services associated with the package deal. If the payments cover the cost of basic service¹ but not the total amount owed, the ETC may not disconnect the customer's basic service. Any remaining amounts after all outstanding basic service charges are paid can be attributed to the remainder of the bill. If these amounts do not cover the outstanding charges, the ETC MAY default the customer to the ETC's minimum basic service option and terminate the other services associated with the package deal. If the total amount paid by the customer does not cover the outstanding basic service charges, the ETC may proceed with collection procedures (including disconnection of basic service) pursuant to Chapter 290; the ETC does not have to default the customer to the minimum basic service option in this instance.

¹ ETCs should use the tariffed-rate for the particular basic service plan that is offered as part of the package deal, i.e. economy or premium, to calculate the cost of basic service.

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For example, as part of a package deal, a customer receives premium basic service calling bundled with voicemail, call waiting and 5 hours of long distance service for \$50.00 per month. To date, the customer has paid a total of \$ 200.00 (Scenario No. 1) and \$ 125.00 (Scenario No. 2) for 5 months worth of service. The tariffed rate for the basic service provided with this bundle is \$30 per month, thus the customer's basic service cost for 5 month of service would be \$150.

Under Scenario No. 1, the ETC could not initiate disconnection of the customer's basic service because the \$200 already paid by the customer covers the \$150 cost of basic service. The ETC could terminate the customer's participation in the package deal and switch the customer to the ETC's minimum basic service option. If the ETC does terminate the non-basic portion of the package, i.e. the customer's voicemail, call waiting, and toll service, the ETC must comply with the Optional Services section of Chapter 290 and Chapter 292 in its entirety.

Under Scenario No. 2, the ETC could immediately initiate collection procedures because the \$125 paid does not cover the \$150 basic service costs. If the ETC decides to pursue termination of all services offered, the ETC must comply with the disconnection procedures in Chapter 290 (basic service and optional services) and Chapter 292 (toll service). The ETC could also decide not to pursue total termination and switch the customer to the minimum basic service plan and establish a payment arrangement for the outstanding basic service charges.

Multiple service offerings. For multiple service offerings by ETCs that are not package deals, ETCs must establish and track a minimum of two separate payment arrangements: one for basic service and one for non-basic service, which includes optional services. For example, a customer purchases basic service (\$30/month), voicemail (\$5/month), call waiting (\$5/month) and toll service (\$10/month for 2 hours) from the ETC. The customer's account becomes delinquent – for five months' worth of service the customer has only paid \$75. The ETC must first attribute all payments to basic service; in this case, that leaves \$75 in basic service, \$50 in optional services, and \$50 in toll services in arrears. The ETC must then make a payment arrangement for the \$75 in basic services. It may then either: (a) make a combined payment arrangement for the \$100 in optional and toll services or (b) make individual payment arrangements for the \$50 in optional services and \$50 in toll services.

8. How should ETCs handle situations where a customer remits payment for a past due bill in full, but the payment is received after the current month's bill has been sent?

Answer: Using the current month's *due date* as the determining factor, apportion any amounts paid to overdue balances first (for all services), with basic paid first. If a payment for a past due bill is received *after* the due date for the current month's bill, the payment must be attributed to past due basic first (both the previous month's and current month's bills). Any remaining amount can be attributed to other services at the discretion of the ETC.

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For example, an ETC customer's due date for bills is the 30th day of each month and the basic service portion of the bill is \$30. On August 5, a bill is mailed to the customer for \$50 due August 30. On September 5, a bill is mailed to the customer for the \$50 due on September 30.

If the customer made a \$50 payment on September 10, the ETC should apply the entire payment to the August bill and not to the basic services portion of the pending September bill due on the 30th.

If the customer does not make a payment on the August bill until October 1, and the total amount of the payment is \$50.00, the ETC must apply the \$50 first to the August basic service charge of \$30, then to the September basic charge of \$30 (because the September bill is now past due) – leaving the customer \$10 in arrears for basic service and \$40 in arrears for all other services.

If the customer makes a \$70 payment on October 1, the ETC must apply the payment first to the August basic service charge of \$30, then to the September basic charge of \$30, then the August non-basic charge of \$20 – leaving the customer paid in full for basic service and \$30 in arrears for non-basic service.

Specific questions regarding the application or interpretation of Chapter

291:

9. Can a company that is both a non-ETC, as well as an ETC, choose to follow the existing Chapter 81 for its non-ETC service?

Answer: Until November 1, 2002, the carrier may follow either Chapter 81 & 86 or 292 - though the carrier must follow the chapter it chooses in its entirety. After November 1, the carrier must follow Chapter 291 for the non-ETC portion of its business, unless a waiver is received.

10. If a customer opts to cancel service (pursuant to Chapter 291 §9(B) and Chapter 292 §8(B), is she obligated to pay for wholesale service charges incurred by the CLEC on behalf of the customer?

Answer: We expect that these situations will be covered by written contracts between the CLEC and its customers.

11. When a non-ETC transfers a customer with a medical emergency to an ETC, can it choose the ETC if multiple ETCs provide service in the customer's area?

Answer: Yes.

Specific questions regarding the application or interpretation of Chapter 292:

12. Does the current 14-day written notification for pending disconnections pursuant to current Chap. 81 meet the requirement of Chapter 292 §13(A) (recorded message on line after termination)? If not, IXC's need time to implement.

Answer: Prior to November 1, 2002, IXC's can choose to follow either Chapter 81 or Chapter 292, including the disconnection provisions contained in each Chapter. After November 1, 2002, IXC's that still wish to follow the requirements of Chapter 81 must seek a waiver from the Commission.

If anyone has questions regarding these matters, please contact me at (207) 287-1596 or at derek.d.davidson@state.me.us.